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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,823	06/29/2001	Gregory Ashton	8618	9706

27752 7590 08/12/2003

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CINCINNATI, OH 45224

EXAMINER

FLYNN, AMANDA R

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/12/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/897,823

Applicant(s)

ASHTON ET AL.

Examiner

Amanda Flynn

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 is/are allowed.
- 6) ☒ Claim(s) 23-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. Claims 23-38 of this application conflict with claims 2-16 of Application No. 10/179,696. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.
2. Claims 23-38 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2-16 of copending Application No. 10/179,696. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Specifically, claims 23 and 24 of the instant application contain identical limitations as claim 2 of application number 10/179,696. Claim 25 of the instant application contains identical limitations as claim 3 of application number 10/179,696. Claim 26 of the instant application contains identical limitations as claim 4 of application number 10/179,696.

Claims 27-38 are identical to claims 5-16 of Application No. 10/179,696. Appropriate action should be taken in either application to address this issue.

### *Claim Objections*

3. Due to the most recent amendment to the claims (in Paper No. 12), claim 24 now appears to be unnecessarily redundant.

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***Claim Rejections - 35 USC § 102***

4. The previously applied 35 U.S.C. § 102 and 103 rejections regarding claims 1, 3 and 5-38 are withdrawn.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,120,632 to Dragoo et al.

Dragoo et al. discloses an absorbent article for fitting about a wearer's body comprising a containment assembly having a front waist region (31), a back waist region (33), a crotch region (35) disposed between the front and back waist regions, side edges defining leg opening margins when the absorbent article is closed, a topsheet (24), a backsheet (26) and an absorbent core (28) disposed at least partially between the topsheet and the backsheet. Dragoo et al. disclose at least one leg cuff (32). Dragoo et al. state that the leg cuff comprises an "activated region" that is preferably formed of an incrementally stretched laminate to impart a varying degree of elasticity, as taught by Patent Number 5,156,793 (see column 5, lines 47-65).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. in view of U.S. Patent Number 4,690,681 to Haunschild et al.

Dragoo et al. disclose the previously described absorbent article having leg cuffs comprising an incrementally stretched laminate. Dragoo et al. do not specify that the absorbent article could be "pre-closed".

Haunschild et al. disclose a "pre-closed" absorbent article and state that is more likely to be accepted by a wearer, due to the fact that the pre-closed article looks like normal undergarments (col. 2, lines 25-26).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the absorbent article having leg cuffs made of an incrementally stretched laminate as disclosed by Dragoo et al., wherein the article is made in a "pre-closed" fashion as taught by Haunschild et al., to appear more like normal undergarments and therefore be more acceptable to a wearer.

#### ***Allowable Subject Matter***

9. Claims 1-22 are allowed.

10. Claims 23-30, 32-34 and 36-38 would be allowable if the double patenting rejections are overcome and the claims are rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Number 5,156,793 to Buell et al. discloses a method of


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incrementally stretching a laminate material to provide variable elasticity throughout the material.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Flynn whose telephone number is 703-306-4056. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 703-308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Amanda Flynn  
Examiner  
Art Unit 3751

  
arf  
August 10, 2003

  
8/11/03

GREGORY HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700